1908
March 17.

APPELLATE CIVIL.

Before Sir John Stanley Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

GOBIND PRASAD (PLAINTIFF) *v.* GOMTI AND OTHERS (DEFENDANTS).*

Hindu law—Religious endowment—Endowment to take effect after a life estate.

Held that there is no objection to the limitation by a Hindu testator or settlor of a life estate followed by an endowment of property to religious or charitable purposes.

THIS was a suit instituted for the purpose of getting rid of the effect of a certain deed of endowment (*tamliknama*) executed by one Dwarka Prasad on the 2nd of July 1904. The reliefs asked for by the plaintiff were, first, that the appointment of certain persons as mutawallis of the endowed property should be set aside, and, secondly that it might be declared that the dedication of certain property, purporting to be made by means of the (*tamliknama*) in question, was null and void. The court of first instance (Subordinate Judge of Shahjahanpur) dismissed the suit *in toto*. The plaintiff appealed to the High Court.

Mr. *Abdul Majid*, for the appellant.

Munshi *Gobind Prasad* and Babu *Sital Prasad Ghosh*, for the respondents.

STANLEY, C.J., and BURKITT, J.—Of the two grounds of appeal pressed before us in argument, the first is that Dwarka Prasad had no power under Hindu law, or under the award of the 28th of May, 1879, to appoint the defendants 2—4 as *mutawallis* of the temple in the pleadings referred to, and that their appointment was invalid. It appears that there were disputes in regard to that temple, and the matters in difference were referred to arbitration. An award was passed on the 28th of May 1879, which provided that Dwarka Prasad should be the superintendent and manager of the temple. There appears to be no provision in the award for the appointment of a successor to him. We only find in it a direction that if any of the representatives of Dwarka Prasad act dishonestly in regard to the management of the temple, another representative should be competent to defray such expenses and manage and supervise the

* First Appeal No. 161 of 1906 from a decree of Kunwar Bahadur, Officiating Subordinate Judge of Shahjahanpur, dated the 30th of April 1906.

endowment. The award further provides that if all the heirs and representatives of the superintendent turn out dishonest, the management should be under the supervision of the Government. Dwarka Prasad, it has been found, was the founder of the temple, and as such he would have an inherent right to appoint successors, in the absence of any express provision for such appointment. We find, as we have said, in the award, no provision for the appointment of a successor, and therefore it appears to us that Dwarka Prasad was entitled, as he purported to do in the *tamliknama* of the 2nd of July, 1904, to appoint superintendents in succession to himself.

The second point raised in appeal was that there was no valid endowment under the *tamliknama* of the 2nd of July, 1904. By that document, Dwarka Prasad reserved to himself a life estate in the endowed property and gave the property after his death to his daughter for her life and after her death, directed that it should be applied on the temple, that is, for the purposes of the existing endowment. It was contended by Mr. *Abdul Majid*, on behalf of the appellants, that the limitation of the property after the life estates was contrary to the Hindu law, and was void. He relied upon the ruling in the well-known Tagore case. We are of opinion that the limitation in this case is in no way contrary to the rule laid down in that case by their Lordships of the Privy Council. There is no objection so far as we are aware to the limitation by a Hindu testator or settlor of a life estate, followed by an endowment of property to religious or charitable purposes. The learned Subordinate Judge was of opinion that the suit was premature, and therefore dismissed it. In that opinion we do not concur, but we think that Gobind Prasad is not entitled to maintain the suit and that it ought to have been dismissed on the merits. We therefore dismiss the appeal with costs.

Appeal dismissed.